

1 Eugene P. Ramirez (State Bar No. 134865)
 epr@manningllp.com
 2 Andrea K. Kornblau (State Bar No. 291613)
 akk@manningllp.com
 3 **MANNING & KASS**
ELLROD, RAMIREZ, TRESTER LLP
 4 801 S. Figueroa St, 15th Floor
 Los Angeles, California 90017-3012
 5 Telephone: (213) 624-6900
 Facsimile: (213) 624-6999

6 Attorneys for Defendant,
 7 CITY OF BEAUMONT

8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10
 11 ROBERT DUH and SHARON
 TEAGUE,

12 Plaintiffs,

13 v.

14 CITY OF BEAUMONT; and DOES 1-
 15 10, inclusive,

16 Defendants.

Case No. 5:17-cv-00831-JGB-DTB
 [District Judge, Jesus G. Bernal;
 Magistrate Judge David T. Bristow]

**ANSWER OF DEFENDANT TO
 PLAINTIFFS' COMPLAINT:
 DEMAND FOR JURY TRIAL**

Complaint Filed: 04/28/2017
 Trial Date: Not Yet Set

17
 18 Defendant CITY OF BEAUMONT ("Defendant") hereby Answers plaintiffs'
 19 Complaint on file herein (filed April 28, 2017) – hereinafter referred to as the
 20 "Complaint") and defendant hereby admits, denies, and alleges as follows:

21 1. Answering paragraph 1 of the Complaint, under the header "Jurisdiction
 22 and Venue": Defendant admits that this Court has jurisdiction of civil actions arising
 23 under the Constitution, laws, or treaties of the United States, including claims arising
 24 under 28 U.S.C. §§ 1331 and 1343. As to the remaining allegations of this paragraph,
 25 at present, Defendant does not have sufficient knowledge, or information or belief, to
 26 enable Defendant to answer the remaining allegations contained within such paragraph,
 27 as stated, and on those grounds deny generally and specifically each and every
 28 remaining allegation contained therein.

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW

2. Answering paragraph 2 of the Complaint, under the header "Jurisdiction and Venue": Defendant admits that claims arising from events that occurred in the County of Riverside, California, may be brought before the venue of this Court. As to the remaining allegations of this paragraph, at present, Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the remaining allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every remaining allegation contained therein.

3. Answering paragraph 3 of the Complaint, under the header "Introduction": Defendant admits that plaintiffs purport to bring this action as a civil rights action. Answering further, Defendant admits that plaintiffs allege the incident occurred on September 17, 2016, involving decedent Robert Duh, Jr. Defendant denies that plaintiffs are entitled to any relief. As to the remaining allegations of this paragraph, at present, Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the remaining allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every remaining allegation contained therein.

4. Answering paragraph 4 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegation contained within this paragraph regarding decedent Robert Duh, Jr.'s residency, and on that ground denies generally and specifically the allegation contained therein.

5. Answering paragraph 5 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegation contained within this paragraph regarding plaintiff Robert Duh's residency, and on that ground denies generally and specifically the allegation contained therein. As to the remaining allegations of this paragraph, at present, Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the remaining allegations contained within such paragraph,

1 as stated, and on those grounds deny generally and specifically each and every
2 remaining allegation contained therein.

3 6. Answering paragraph 6 of the Complaint, under the header "Parties":
4 Defendant does not have sufficient knowledge, or information or belief, to enable
5 Defendant to answer the allegation contained within this paragraph regarding plaintiff
6 Sharon Teague's residency, and on that ground denies generally and specifically the
7 allegation contained therein. As to the remaining allegations of this paragraph, at
8 present, Defendant does not have sufficient knowledge, or information or belief, to
9 enable Defendant to answer the remaining allegations contained within such paragraph,
10 as stated, and on those grounds deny generally and specifically each and every
11 remaining allegation contained therein.

12 7. Answering paragraph 7 of the Complaint, under the header "Parties":
13 Defendant admits that the City of Beaumont is an incorporated municipality in
14 California. As to the remaining allegations of this paragraph, at present, Defendant
15 does not have sufficient knowledge, or information or belief, to enable Defendant to
16 answer the remaining allegations contained within such paragraph, as stated, and on
17 those grounds deny generally and specifically each and every remaining allegation
18 contained therein.

19 8. Answering paragraph 8 of the Complaint, under the header "Parties":
20 Defendant does not have sufficient knowledge, or information or belief, to enable
21 Defendant to answer the allegation contained within this paragraph regarding decedent
22 Robert Duh, Jr.'s residency, and on that ground denies generally and specifically the
23 allegation contained therein.

24 9. Answering paragraph 9 of the Complaint, under the header "Parties":
25 Defendant does not have sufficient knowledge, or information or belief, to enable
26 Defendant to answer the allegations contained within this paragraph, as stated, and on
27 those grounds deny generally and specifically each and every allegation contained
28 therein.

10. Answering paragraph 10 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

11. Answering paragraph 11 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

12. Answering paragraph 12 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

13. Answering paragraph 13 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

14. Answering paragraph 14 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

15. Answering paragraph 15 of the Complaint, under the header "Parties": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on

1 those grounds deny generally and specifically each and every allegation contained
 2 therein.

3 16. Answering paragraph 16 of the Complaint, under the header "Parties":
 4 Defendant does not have sufficient knowledge, or information or belief, to enable
 5 Defendant to answer the allegations contained within this paragraph, as stated, and on
 6 those grounds deny generally and specifically each and every allegation contained
 7 therein.

8 17. Answering paragraph 17 of the Complaint, under the header "Parties":
 9 Defendant does not have sufficient knowledge, or information or belief, to enable
 10 Defendant to answer the allegations contained within this paragraph, as stated, and on
 11 those grounds deny generally and specifically each and every allegation contained
 12 therein.

13 18. Answering paragraph 18 of the Complaint, under the header "Parties":
 14 Defendant does not have sufficient knowledge, or information or belief, to enable
 15 Defendant to answer the allegations contained within this paragraph, as stated, and on
 16 those grounds deny generally and specifically each and every allegation contained
 17 therein.

18 19. Answering paragraph 19 of the Complaint, under the header "Facts
 19 Common to All Claims for Relief": Defendant repeats, reiterates and realleges all of the
 20 admissions and denials contained in the foregoing Answer which are set forth to each
 21 and every allegation contained in paragraphs 1 through 18, inclusive, of plaintiffs'
 22 Complaint.

23 20. Answering paragraph 20 of the Complaint, under the header "Facts
 24 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 25 information or belief, to enable Defendant to answer the allegations contained within
 26 this paragraph, as stated, and on those grounds deny generally and specifically each and
 27 every allegation contained therein.

28 21. Answering paragraph 21 of the Complaint, under the header "Facts

1 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 2 information or belief, to enable Defendant to answer the allegations contained within
 3 this paragraph, as stated, and on those grounds deny generally and specifically each and
 4 every allegation contained therein.

5 22. Answering paragraph 22 of the Complaint, under the header "Facts
 6 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 7 information or belief, to enable Defendant to answer the allegations contained within
 8 this paragraph, as stated, and on those grounds deny generally and specifically each and
 9 every allegation contained therein.

10 23. Answering paragraph 23 of the Complaint, under the header "Facts
 11 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 12 information or belief, to enable Defendant to answer the allegations contained within
 13 this paragraph, as stated, and on those grounds deny generally and specifically each and
 14 every allegation contained therein.

15 24. Answering paragraph 24 of the Complaint, under the header "Facts
 16 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 17 information or belief, to enable Defendant to answer the allegations contained within
 18 this paragraph, as stated, and on those grounds deny generally and specifically each and
 19 every allegation contained therein.

20 25. Answering paragraph 25 of the Complaint, under the header "Facts
 21 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 22 information or belief, to enable Defendant to answer the allegations contained within
 23 this paragraph, as stated, and on those grounds deny generally and specifically each and
 24 every allegation contained therein.

25 26. Answering paragraph 26 of the Complaint, under the header "Facts
 26 Common to All Claims for Relief": Defendant does not have sufficient knowledge, or
 27 information or belief, to enable Defendant to answer the allegations contained within
 28 this paragraph, as stated, and on those grounds deny generally and specifically each and

1 every allegation contained therein.

2 27. Answering paragraph 27 of the Complaint, under the header "First Claim
3 for Relief": Defendant repeats, reiterates and realleges all of the admissions and denials
4 contained in the foregoing Answer which are set forth to each and every allegation
5 contained in paragraphs 1 through 26, inclusive, of plaintiffs' Complaint.

6 28. Answering paragraph 28 of the Complaint, under the header "First Claim
7 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
8 enable Defendant to answer the allegations contained within this paragraph, as stated,
9 and on those grounds deny generally and specifically each and every allegation
10 contained therein.

11 29. Answering paragraph 29 of the Complaint, under the header "First Claim
12 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
13 enable Defendant to answer the allegations contained within this paragraph, as stated,
14 and on those grounds deny generally and specifically each and every allegation
15 contained therein.

16 30. Answering paragraph 30 of the Complaint, under the header "First Claim
17 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
18 enable Defendant to answer the allegations contained within this paragraph, as stated,
19 and on those grounds deny generally and specifically each and every allegation
20 contained therein.

21 31. Answering paragraph 31 of the Complaint, under the header "First Claim
22 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
23 enable Defendant to answer the allegations contained within this paragraph, as stated,
24 and on those grounds deny generally and specifically each and every allegation
25 contained therein.

26 32. Answering paragraph 32 of the Complaint, under the header "First Claim
27 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
28 enable Defendant to answer the allegations contained within this paragraph, as stated,

1 and on those grounds deny generally and specifically each and every allegation
2 contained therein.

3 33. Answering paragraph 33 of the Complaint, under the header "First Claim
4 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
5 enable Defendant to answer the allegations contained within this paragraph, as stated,
6 and on those grounds deny generally and specifically each and every allegation
7 contained therein.

8 34. Answering paragraph 34 of the Complaint, under the header "First Claim
9 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
10 enable Defendant to answer the allegations contained within this paragraph, as stated,
11 and on those grounds deny generally and specifically each and every allegation
12 contained therein.

13 35. Answering paragraph 35 of the Complaint, under the header "First Claim
14 for Relief": Defendant does not have sufficient knowledge, or information or belief, to
15 enable Defendant to answer the allegations contained within this paragraph, as stated,
16 and on those grounds deny generally and specifically each and every allegation
17 contained therein.

18 36. Answering paragraph 36 of the Complaint, under the header "First Claim
19 for Relief": Defendant denies that plaintiffs are entitled to any relief.

20 37. Answering paragraph 37 of the Complaint, under the header "Third (sic)
21 Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and
22 denials contained in the foregoing Answer which are set forth to each and every
23 allegation contained in paragraphs 1 through 36, inclusive, of plaintiffs' Complaint.

24 38. Answering paragraph 38 of the Complaint, under the header "Third (sic)
25 Claim for Relief": Defendant does not have sufficient knowledge, or information or
26 belief, to enable Defendant to answer the allegations contained within this paragraph, as
27 stated, and on those grounds deny generally and specifically each and every allegation
28 contained therein.

39. Answering paragraph 39 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

40. Answering paragraph 40 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

41. Answering paragraph 41 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

42. Answering paragraph 42 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

43. Answering paragraph 43 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

44. Answering paragraph 44 of the Complaint, under the header "Third (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as

1 stated, and on those grounds deny generally and specifically each and every allegation
 2 contained therein.

3 45. Answering paragraph 45 of the Complaint, under the header "Third (sic)
 4 Claim for Relief": Defendant denies that plaintiffs are entitled to any relief.

5 46. Answering paragraph 46 of the Complaint, under the header "Fourth (sic)
 6 Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and
 7 denials contained in the foregoing Answer which are set forth to each and every
 8 allegation contained in paragraphs 1 through 36, inclusive, of plaintiffs' Complaint.

9 47. Answering paragraph 47 of the Complaint, under the header "Fourth (sic)
 10 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 11 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 12 stated, and on those grounds deny generally and specifically each and every allegation
 13 contained therein.

14 48. Answering paragraph 48 of the Complaint, under the header "Fourth (sic)
 15 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 16 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 17 stated, and on those grounds deny generally and specifically each and every allegation
 18 contained therein.

19 49. Answering paragraph 49 of the Complaint, under the header "Fourth (sic)
 20 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 21 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 22 stated, and on those grounds deny generally and specifically each and every allegation
 23 contained therein.

24 50. Answering paragraph 50 of the Complaint, under the header "Fourth (sic)
 25 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 26 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 27 stated, and on those grounds deny generally and specifically each and every allegation
 28 contained therein.

51. Answering paragraph 51 of the Complaint, under the header "Fourth (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

52. Answering paragraph 52 of the Complaint, under the header "Fourth (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

53. Answering paragraph 53 of the Complaint, under the header "Fourth (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

54. Answering paragraph 54 of the Complaint, under the header "Fourth (sic) Claim for Relief": Defendant denies that plaintiffs are entitled to any relief.

55. Answering paragraph 55 of the Complaint, under the header "Fifth (sic) Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 54, inclusive, of plaintiffs' Complaint.

56. Answering paragraph 56 of the Complaint, under the header "Fifth (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

57. Answering paragraph 57 of the Complaint, under the header "Fifth (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or

1 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 2 stated, and on those grounds deny generally and specifically each and every allegation
 3 contained therein.

4 58. Answering paragraph 58 of the Complaint, under the header "Fith (sic)
 5 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 6 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 7 stated, and on those grounds deny generally and specifically each and every allegation
 8 contained therein.

9 59. Answering paragraph 59 of the Complaint, under the header "Fith (sic)
 10 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 11 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 12 stated, and on those grounds deny generally and specifically each and every allegation
 13 contained therein.

14 60. Answering paragraph 60 of the Complaint, under the header "Fith (sic)
 15 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 16 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 17 stated, and on those grounds deny generally and specifically each and every allegation
 18 contained therein.

19 61. Answering paragraph 61 of the Complaint, under the header "Fith (sic)
 20 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 21 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 22 stated, and on those grounds deny generally and specifically each and every allegation
 23 contained therein.

24 62. Answering paragraph 62 of the Complaint, under the header "Fith (sic)
 25 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 26 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 27 stated, and on those grounds deny generally and specifically each and every allegation
 28 contained therein.

63. Answering paragraph 63 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

64. Answering paragraph 64 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

65. Answering paragraph 65 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

66. Answering paragraph 66 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

67. Answering paragraph 67 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant denies that plaintiffs are entitled to any relief.

68. Answering paragraph 68 of the Complaint, under the header "Fith (sic) Claim for Relief": Defendant denies that plaintiffs are entitled to any relief.

69. Answering paragraph 69 of the Complaint, under the header "Sixth (sic) Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 68, inclusive, of plaintiffs' Complaint.

1 70. Answering paragraph 70 of the Complaint, under the header "Sixth (sic)
2 Claim for Relief": Defendant does not have sufficient knowledge, or information or
3 belief, to enable Defendant to answer the allegations contained within this paragraph, as
4 stated, and on those grounds deny generally and specifically each and every allegation
5 contained therein.

6 71. Answering paragraph 71 of the Complaint, under the header "Sixth (sic)
7 Claim for Relief": Defendant does not have sufficient knowledge, or information or
8 belief, to enable Defendant to answer the allegations contained within this paragraph, as
9 stated, and on those grounds deny generally and specifically each and every allegation
10 contained therein.

11 72. Answering paragraph 72 of the Complaint, under the header "Sixth (sic)
12 Claim for Relief": Defendant does not have sufficient knowledge, or information or
13 belief, to enable Defendant to answer the allegations contained within this paragraph, as
14 stated, and on those grounds deny generally and specifically each and every allegation
15 contained therein.

16 73. Answering paragraph 73 of the Complaint, under the header "Sixth (sic)
17 Claim for Relief": Defendant does not have sufficient knowledge, or information or
18 belief, to enable Defendant to answer the allegations contained within this paragraph, as
19 stated, and on those grounds deny generally and specifically each and every allegation
20 contained therein.

21 74. Answering paragraph 74 of the Complaint, under the header "Sixth (sic)
22 Claim for Relief": Defendant does not have sufficient knowledge, or information or
23 belief, to enable Defendant to answer the allegations contained within this paragraph, as
24 stated, and on those grounds deny generally and specifically each and every allegation
25 contained therein. Defendant denies that plaintiffs are entitled to any relief.

26 75. Answering paragraph 75 of the Complaint, under the header "Tenth (sic)
27 Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and
28 denials contained in the foregoing Answer which are set forth to each and every

1 allegation contained in paragraphs 1 through 74, inclusive, of plaintiffs' Complaint.

2 76. Answering paragraph 76 of the Complaint, under the header "Tenth (sic)
 3 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 4 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 5 stated, and on those grounds deny generally and specifically each and every allegation
 6 contained therein.

7 77. Answering paragraph 77 of the Complaint, under the header "Tenth (sic)
 8 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 9 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 10 stated, and on those grounds deny generally and specifically each and every allegation
 11 contained therein.

12 78. Answering paragraph 78 of the Complaint, under the header "Tenth (sic)
 13 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 14 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 15 stated, and on those grounds deny generally and specifically each and every allegation
 16 contained therein.

17 79. Answering paragraph 79 of the Complaint, under the header "Tenth (sic)
 18 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 19 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 20 stated, and on those grounds deny generally and specifically each and every allegation
 21 contained therein.

22 80. Answering paragraph 80 of the Complaint, under the header "Tenth (sic)
 23 Claim for Relief": Defendant does not have sufficient knowledge, or information or
 24 belief, to enable Defendant to answer the allegations contained within this paragraph, as
 25 stated, and on those grounds deny generally and specifically each and every allegation
 26 contained therein. Defendant denies that plaintiffs are entitled to any relief. Defendant
 27 denies that plaintiffs are entitled to any relief.

28 81. Answering paragraph 81 of the Complaint, under the header "Eleventh

(sic) Claim for Relief": Defendant repeats, reiterates and realleges all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 80, inclusive, of plaintiffs' Complaint.

82. Answering paragraph 82 of the Complaint, under the header "Eleventh (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

83. Answering paragraph 83 of the Complaint, under the header "Eleventh (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

84. Answering paragraph 84 of the Complaint, under the header "Eleventh (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

85. Answering paragraph 85 of the Complaint, under the header "Eleventh (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

86. Answering paragraph 86 of the Complaint, under the header "Eleventh (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information or belief, to enable Defendant to answer the allegations contained within this paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

1 87. Answering paragraph 87 of the Complaint, under the header "Eleventh
 2 (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information
 3 or belief, to enable Defendant to answer the allegations contained within this paragraph,
 4 as stated, and on those grounds deny generally and specifically each and every
 5 allegation contained therein.

6 88. Answering paragraph 88 of the Complaint, under the header "Eleventh
 7 (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information
 8 or belief, to enable Defendant to answer the allegations contained within this paragraph,
 9 as stated, and on those grounds deny generally and specifically each and every
 10 allegation contained therein.

11 89. Answering paragraph 89 of the Complaint, under the header "Eleventh
 12 (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information
 13 or belief, to enable Defendant to answer the allegations contained within this paragraph,
 14 as stated, and on those grounds deny generally and specifically each and every
 15 allegation contained therein.

16 90. Answering paragraph 90 of the Complaint, under the header "Eleventh
 17 (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information
 18 or belief, to enable Defendant to answer the allegations contained within this paragraph,
 19 as stated, and on those grounds deny generally and specifically each and every
 20 allegation contained therein.

21 91. Answering paragraph 91 of the Complaint, under the header "Eleventh
 22 (sic) Claim for Relief": Defendant does not have sufficient knowledge, or information
 23 or belief, to enable Defendant to answer the allegations contained within this paragraph,
 24 as stated, and on those grounds deny generally and specifically each and every
 25 allegation contained therein.

26 92. Answering paragraph 92 of the Complaint, under the header "Eleventh
 27 (sic) Claim for Relief": Defendant denies that plaintiffs are entitled to any relief.

28 93. Answering plaintiffs' Prayer for Relief, Defendants deny all liability to

1 plaintiffs, including, but not limited to, all liability for any damages (general, special,
2 exemplary or otherwise), penalties, fees, or costs of any kind, or for any relief of any
3 kind from any of the Defendants to any of the plaintiffs.

4 94. To the extent plaintiff(s) assert(s) any other claims or contentions not
5 specifically addressed herein above, Defendants generally and specifically deny each
6 and every remaining allegation and/or claim.

7 **AFFIRMATIVE DEFENSES**

8 95. As separate and affirmative defenses, defendants allege as follows¹:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Statute of Limitations)**

11 96. Plaintiffs' Complaint, and each alleged cause of action in it, fails to state a
12 claim upon which relief can be granted.

13 97. Plaintiffs' Complaint also fails to state a claim against any defendant in this
14 action.

15 98. Plaintiffs' and/or decedent's claims are time-barred by the operative
16 statute(s) of limitations (including, but not limited to, California Code of Civil
17 Procedure § 335.1).

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Tort Claims Act Violation)**

20 99. This action is barred by the Plaintiffs' failure to comply with the
21 government tort claims presentation requirements, California Government Code § 900,
22 *et seq.*, including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2,
23 911.4, 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

24 100. The Complaint is barred based on plaintiffs' failure to exhaust
25 administrative remedies prior to filing this lawsuit.

26
27 ¹ For purposes of the affirmative defenses, affirmative defenses that reference "plaintiffs" shall also be construed to
28 apply, wherever feasible, to plaintiffs' decedent.

101. Plaintiffs' recovery is barred for failure to timely comply with the provisions of the claims statutes, including, but not limited to California Government Code §§ 901, 905, 905.2, 911.2, 945.4, 945.6, 950.2.

102. Plaintiffs' recovery is barred because the causes of action stated in the complaint do not correspond with the legal claims asserted in plaintiffs' written claim. The Complaint thereby alleges legal bases for recovery which are not fairly reflected in the written claim.

THIRD AFFIRMATIVE DEFENSE

(Waiver, Estoppel, Unclean Hands)

103. Defendants allege that plaintiffs' action is barred by reason of conduct, actions and inactions of plaintiffs which amount to and constitute a waiver of any right plaintiffs may or might have had in reference to the matters and things alleged in the Complaint, or that otherwise estop plaintiffs from recovery in this action, including but not limited to the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

104. Plaintiffs' claims are barred or limited to the extent plaintiffs failed to mitigate plaintiffs' injuries or damages, if there were any. Plaintiffs have failed to mitigate the damages, if any, which plaintiffs have sustained, and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, plaintiffs have failed to use reasonable diligence in caring for any injuries, failed to use reasonable means to prevent aggravation of any injuries and failed to take reasonable precautions to reduce any injuries and damages.

FIFTH AFFIRMATIVE DEFENSE

(Contributory and/or Comparative Liability)

105. Plaintiffs' claims are barred or limited by plaintiffs' and/or decedent's contributory/comparative negligence or other conduct, acts, or omissions, and to the extent any plaintiffs suffered any injury or damages, it was the result of plaintiffs'

1 and/or decedent's own negligent or deliberate actions or omissions.

2 106. Plaintiffs' recovery is barred because any injury or damage suffered by
3 plaintiffs' decedent and/or to plaintiffs was caused solely by reason of the plaintiffs'
4 decedent's wrongful acts and conduct and the willful resistance to a peace officer in the
5 discharge their duties. The conduct set forth in the Complaint, if and to the extent it
6 occurred, was privileged and justified and done with a good faith belief that it was
7 correct and no action may be taken against the answering defendants on account of such
8 conduct.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Public Entity/Employee Immunity for Others' Torts)**

11 107. Plaintiffs' recovery is barred because public entities and employees are
12 immune from liability for any injury caused by the act or omission of another person.
13 Gov. Code §§ 815 *et seq.*, 820.2 *et seq.*

14 108. The answering defendants are informed and believe and thereon allege that
15 if plaintiffs sustained any injury or damages, such injury or damages were solely caused
16 or contributed to by the wrongful conduct of other defendants and/or entities or persons
17 other than the answering defendant. To the extent that plaintiffs' damages were so
18 caused, any recovery by plaintiffs as against the answering defendant should be subject
19 to proportionately comparative equitable indemnity/contribution from such third
20 parties.

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Public Entity/Employee Immunity for Discretionary Acts)**

23 109. There is no liability for any injury or damages, if any there were, resulting
24 from an exercise of discretion vested in a public employee, whether or not such
25 discretion be abused. Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

26 110. Plaintiffs' recovery is barred because public entities and employees are
27 immune from liability for discharging their mandatory duties with reasonable diligence.

28 111. A public employee may not be held liable for injuries or damages, if any,

1 caused by failure to adopt or by adoption of an enactment or by failure to enforce an
 2 enactment and/or law, for an injury caused by his issuance, denial, suspension or
 3 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,
 4 license, certificate, approval, order, or similar authorization, where he is authorized by
 5 enactment to determine whether or not such authorization should be issued, denied,
 6 suspended or revoked, pursuant to Government Code §§ 818.2, 818.4, 818.8, 821 and
 7 821.2. Based thereon, each of the answering defendants are immune from liability for
 8 any injuries claimed by plaintiffs, herein.

9 112. Defendant is immune for any detriment resulting from any of its actions or
 10 omissions at the time of the incident of which plaintiff complains pursuant to
 11 Government Code § 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including, but
 12 not limited to, §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8,
 13 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and
 14 Government Code §§ 854, *et seq.*, including, but not limited to, §§ 845.6, 854.6,
 15 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

EIGHTH AFFIRMATIVE DEFENSE

(Public Entity Immunity)

18 113. To the extent that the Complaint attempts to predicate liability upon any
 19 public entity defendants or any employees thereof for purported negligence in retention,
 20 hiring, employment, training, or supervision of any public employee, such liability is
 21 barred by Government Code sections 815.2 and 820.2 and *Herndon v. County of Marin*
 22 (1972) 25 Cal. App. 3d 933, 935, 936, *rev'd on other grounds by Sullivan v. County of*
 23 *Los Angeles* (1974) 12 Cal.3d 710; and by the lack of any duty running to any
 24 plaintiffs; by the fact that any such purported act or omission is governed exclusively
 25 by statute and is outside the purview of any public employees' authority; and by the
 26 failure of any such acts or omissions to be the proximate or legal cause of any injury
 27 alleged in the Complaint. *See de Villers v. County of San Diego*, 156 Cal.App.4th 238,
 28 251-253, 255-256 (2007).

114. Defendant may not be held liable on a *respondeat superior* theory for any negligent or wrongful act or omission on the part of any subordinate. Cal. Government Code §§ 844.6, 845.6; Cal. Civil Code § 2351; *Malloy v. Fong* (1951) 37 Cal.2d 356, 378-379; *Monell v. Department of Social Services of the City of New York* (1978) 436 U.S. 658; *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630, 645-646; *cf. City of Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los Angeles v. Heller*, 475 U.S. 796 (1986).

NINTH AFFIRMATIVE DEFENSE

(Qualified Immunity & Good Faith Immunity)

115. Defendants and their agents or officers at all times relevant to this action acted reasonably and prudently under the circumstances. Defendants therefore assert the individual defendants' Qualified Immunity from liability to the fullest extent applicable.

116. Defendant(s) is/are immune from liability under the Federal Civil Rights Act because they acted in good faith with an honest and reasonable belief that their actions were necessary and appropriate. Defendant(s) is/are immune from liability under the Federal Civil Rights Act because a reasonable police officer could believe that their acts and conduct were appropriate. Defendant(s) is/are immune from liability under the Federal Civil Rights Act because their conduct did not violate clearly established rights. Defendant(s) is/are also immune from liability under the doctrine of Qualified Immunity.

117. At all relevant times, defendants acted within the scope of discretion, with due care, and good faith fulfillment of responsibilities pursuant to applicable statutes, rules and regulation, within the bounds of reason, and with the good faith belief that their actions comported with all applicable federal and state laws. *Harlow v. Fitzgerald* (1982) 457 U.S. 800; Cal Gov. Code §§ 815.2 and 820.2.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

118. At the time and place referred to in the Complaint, and before such event, plaintiffs' decedent knew, appreciated, and understood each and every risk involved in placing himself in the position which plaintiff then assumed, and willingly, knowingly and voluntarily assumed each of such risks, including, but not limited to, the risk of suffering personal bodily injury, lawful deprivation of right(s), or death.

ELEVENTH AFFIRMATIVE DEFENSE

119. Defendant affirmatively pleads that it cannot be liable to Plaintiffs for exemplary damages because it at no time acted maliciously, fraudulently or with an intent to harm plaintiffs or to deprive them of any legally protected rights.

TWELFTH AFFIRMATIVE DEFENSE

120. Defendant affirmatively pleads that, in this action, plaintiffs are precluded from seeking attorney fees under California Code of Civil Procedure section 1021.5. Plaintiffs' complaint is not pleaded as a private attorney general action. Nowhere in plaintiffs' complaint do plaintiffs identify any important right affecting the public interest that they seek to enforce by making this action. Nowhere in plaintiffs' complaint do plaintiffs identify any significant benefit, whether pecuniary or nonpecuniary, that is to be conferred on the general public or a large class of persons, by reason of plaintiffs' making this action.

THIRTEENTH AFFIRMATIVE DEFENSE

121. Defendant contends that it cannot fully anticipate all affirmative defenses that may be applicable to this action based on the conclusory terms used in Plaintiffs' complaint. Accordingly, Defendant expressly reserves the right to assert additional affirmative defenses if and to the extent that such affirmative defenses become applicable.

JURY DEMAND

122. Defendant demands a trial by jury as to each issue triable by jury.

PRAYER FOR RELIEF

WHEREFORE, the answering Defendant(s) pray as follows:

1 1. That Plaintiff(s) take nothing by this action;

2 2. That Defendant(s) be awarded attorneys' fees and costs of this suit and
3 costs of proof; and that Defendant(s) be awarded such other relief as the Court deems
4 just.

5
6 DATED: June 28, 2017

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

7
8
9 By: /s/ Andrea K. Kornblau

10 Eugene P. Ramirez, Esq.

11 Andrea K. Kornblau, Esq.

12 Attorneys for Defendant,
13 CITY OF BEAUMONT
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
ATTORNEYS AT LAW